

Plaintiff John C. Wright brings this motion to tax as untimely the costs requested by Judith Reece, who was dismissed from the action on May 21, 2010 before any responsive pleadings were filed.

The file reflects that two Notices of Entry of Dismissal were served on Ms. Reece. The first was served on May 26, 2010, and filed with the Court on June 23, 2010. The second Notice of Entry of Dismissal was filed on June 7, 2010, with a service date of June 7, 2010. On July 7, 2010, Ms. Reece filed her memorandum of costs.

California Rule of Court 3.1700(a) requires a prevailing party to "serve and file a memorandum of costs within 15 days after the date of mailing of the notice of entry of judgment or dismissal by the clerk under Code of Civil Procedure section 664.5 . . . " (Underline added). Although Ms. Reece' memorandum of costs was signed on June 16, 2010, it was not filed with the Court until July 7, 2010.

Utilizing the later June 7, 2010 service of the Notice of Entry of Dismissal as the starting date, the memorandum of costs would have to have been served and filed no later than June 28, 2010.<sup>1</sup> The Memorandum of Costs is untimely because it was not filed with the Court until July 7, 2010.

For several reasons, the costs claimed are substantively unwarranted. First, there is no indication in the court's file that Ms. Reece ever filed any motion or responsive pleading before her dismissal from the action. No costs in the form of filing fees were incurred, and she was not a party to the action by virtue of her dismissal. Second, she is not entitled to filing fees incurred by Justin Reece. Third, her claim for \$75.00 for service of process for service of her cross complaint and service of memorandum of costs is unreasonable because those documents could have simply been served by first class mail. And there is no cross complaint filed by Ms. Reece located in the court's file.

Fourth, the costs of blowups, exhibits and photocopies are not reasonably necessary to the conduct of the litigation, and could not have aided the trier of fact, because Ms. Reece was not a party to the action. Fifth, claimed travel costs to and from Los Angeles are unreasonable and unnecessary because Ms. Reece was dismissed from the action, and there was no necessity for her appearance. See CCP §1033.5(c)(2)

Accordingly, Ms. Reece's memorandum of costs is stricken in its entirety.

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<sup>1</sup> This is calculated counting 15 days from June 7, 2010 with the addition of 5 days for mailing. The filing date falls on the 27<sup>th</sup> which is a Sunday. The next business day is June 28, 2010.